

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ALGONQUIN NURSES P.R.N., INC.

Employer<sup>1</sup>

and

Case 14-RC-12449

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 2000

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Algonquin Nurses P.R.N., Inc., is engaged in the home health care industry providing patient care to clients in their homes, nursing homes, assisted living centers, retirement centers, and hospitals. The Employer operates three facilities. The facilities are located in St. Louis County, Jefferson County, and St. Charles County, Missouri.<sup>2</sup> The Petitioner, Service Employees International Union, Local 2000, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The record establishes that the Petitioner seeks to represent a unit of all full-time, regular part-time, and per diem certified nurses aides, CNAs, advanced personal care aides, APCs, nurses aides/home health care aides, and field relief aides employed by the Employer at its facility located at 10135 Manchester Road, St. Louis, Missouri, EXCLUDING office clerical, licensed practical nurses, LPNs, registered nurses, RNs, quality assurance coordinators, staffing coordinators,

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> Respondent's facility located at 10135 Manchester Road, St. Louis, Missouri is referred to herein as its St. Louis County facility, its facility located at 6696 Mall Drive, Cedar Hill, Missouri is referred to herein as its Jefferson County facility, and its facility located at 124-A East Elm Street, O'Fallon, Missouri is referred to herein as its St. Charles County facility.

professional employees, guards, and supervisors as defined in the Act. A hearing officer of the Board held a hearing and both parties filed briefs with me.

The parties disagree on two issues relating to the Petitioner's requested unit: (1) whether a single-facility or multi-facility unit is appropriate; and (2) whether LPNs should be included in the unit. The Petitioner contends that the single-facility unit limited to the employees at the St. Louis County facility is appropriate, while the Employer argues the only appropriate unit is one which includes employees at its St. Louis County, Jefferson County, and St. Charles County facilities. The Employer also argues, contrary to the Petitioner, that the LPNs share a sufficient community of interest with the other employees in the petitioned-for unit so that they must be included in the unit. The Employer further contends that the LPNs must be included in the unit because if they were excluded it would leave them in a unit by themselves which is impractically small.

I have considered the evidence and the arguments presented by the parties on these two issues. As discussed below, I have concluded that the single-facility unit limited to employees at the St. Louis County facility is appropriate. I have also concluded that the LPNs do not share a sufficient community of interest with the other employees in the petitioned-for unit as to require their inclusion in the unit. However, because the record is unclear regarding whether excluding the St. Louis County LPNs would leave them in an impractically small unit, I am permitting them to vote subject to the Board's challenge procedure.

### **I. OVERVIEW OF OPERATIONS**

The Employer provides home health care services to Medicaid, Medicare, and private pay clients from its three facilities located in St. Louis County, St. Charles County, and Jefferson County. The Employer assigns clients to its office closest to their residence. The St. Louis County facility provides services primarily to clients who reside in St. Louis County. The Jefferson County facility provides services primarily to clients who reside in Jefferson, Franklin, and St. Genevieve Counties. The St. Charles County office provides services primarily to

clients who reside in St. Charles and Lincoln Counties. The headquarters of the Employer's operations is located at its St. Louis County facility. All of the Employer's upper managerial personnel work at the St. Louis County facility.

The Employer employs certified nurses aides, (CNAs), advanced personal care aides, (APCs), nurses aides/home health care aides, field relief aides (jointly referred to herein as aides), licensed practical nurses, (LPNs), registered nurses (RNs), and possibly employees in other job classifications, to provide its home health care services. The Employer employs about 116 aides and 3 LPNs at its St Louis County facility. The Employer employs about 29 to 34 aides and 1 LPN at its Jefferson County facility and about 39 aides and 1 LPN at its St. Charles County facility.

## **II. ISSUES TO CONSIDER IN A MULTI-FACILITY SETTING**

Within the health care industry, as in other industries, a single-facility unit is presumptively appropriate. *Visiting Nurses Association of Central Illinois*, 324 NLRB 55, 59 (1997); citing *Manor Healthcare Corp.*, 285 NLRB 224 (1987). As the Petitioner seeks a presumptively appropriate unit, it is the Employer's burden to introduce relevant, affirmative evidence to rebut that presumption. *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999). To rebut the presumption, the Employer must show that the single-facility unit has been "so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity." *J&L Plate, Inc.*, 310 NLRB 429 (1993). In determining whether the challenging party has rebutted the presumption, the relevant factors to consider are: (1) centralized control over daily operations and labor relations, including the extent of local autonomy; (2) extent of functional integration of operations; (3) extent of interchange of employees; (4) work contacts among employees at the facilities; (5) physical and geographical location in relation to each other; (6) differences in products, or skills, or types of work required; and (7) past bargaining history. *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *Alma Plastics Co.*, 265 NLRB 479 (1982); *Beaverite Products, Inc.*,

229 NLRB 369 (1977). Inasmuch as there is no bargaining history at any of the three locations, the analysis herein focuses on the remaining relevant factors.

### **A. Discussion of the relevant factors**

#### **1. Centralized Control Over Daily Operations and Labor Relations**

While the record shows centralized control over labor relations policies, it is clear that day-to-day supervision is separate at each of the three facilities which operate as autonomous units in that regard. The managerial hierarchy at the St. Louis County facility consists of Chief Executive Officer Steve Tamboli, Administrators Mark Tamboli and Anne Tamboli-Keathley, Director of Medicaid and Supervisor Jeannie Brannum, and Supervisor Kim Robinson. A staffing coordinator and quality assurance coordinator also work at the St. Louis County facility, and they report to Jeannie Brannum. On Site Managers Jill Dunivan and Julie Scheffler are Jefferson County's supervisors. On Site Manager Bradley White and a staffing coordinator are St. Charles County's supervisors. All of the aides at the Jefferson County facility report to Julie Scheffler or Jill Dunivan. All of the aides at the St. Charles County facility report to Bradley White. All of the aides at the St. Louis County facility report to Kim Robinson. The LPNs at all three facilities report to Jeannie Brannum.

Supervisors have substantial local autonomy over labor relations issues. Administrator Mark Tamboli has overall responsibility for human resources at all three facilities. However, the local supervisors perform all interviewing, reference checks, and hiring of aides. Local supervisors have the independent authority to, and do regularly, discipline, discharge, and evaluate their employees. However, about 50 percent of the time local supervisors discuss terminations with management at the St. Louis County facility. Local supervisors perform the training of all their employees. Mark Tamboli makes wage increase determinations using a point system and pay range, which he establishes. However, each employee's supervisor determines the amount of the wage increase that each employee will receive through the subjective assignment of points in the employee's annual evaluation. Employees' personnel

files are maintained in the local offices. The Employer records time by having each employee call their local office when they arrive at and leave a client's home. At the end of the pay period, these time records are then forwarded to the St. Louis County facility. Local supervisors do all the scheduling of aides. When an employee needs to call off of work, they call their local supervisor. Local supervisors determine how many clients each aide will be assigned.

Jeannie Brannum who works in the St. Louis County office supervises all of the Employer's LPNs. The record indicates that local supervisors do make job assignments for the LPNs assigned to their facility. When the Employer is hiring an LPN for St. Charles County or Jefferson County, the local supervisor interviews them, but Brannum approves the hiring of all LPNs.

The personnel policies and rules and regulations contained in the Employer's employee handbook apply to all three locations. All three locations use common forms such as job applications, W-2 forms, annual evaluations, time worksheets, code of ethics, confidentiality agreement, and client's rights statement. Benefits, including vacation, health insurance, dental insurance, life insurance, 401(k) plan, and disability, are the same for all three locations, and they are set by management in the St. Louis County facility.

## **2. Functional Integration of Operations**

The three facilities have some functional integration. Training programs for all three facilities are prepared at the St. Louis County facility. However, all training is performed in the local offices and is attended by only employees from the local offices. The three facilities share the same tax identification number. The Employer has one contract for all three facilities to provide services to the State of Missouri. The Missouri Division of Senior Services Department of Health assigns the Employer provider numbers, which all three facilities use. When the State of Missouri performs audits of the Employer, the State views all three locations as one. Thus, if one of the three facilities were to perform poorly in an audit, it would affect the rating of all three locations. The three facilities are covered by one professional liability policy, and one worker's

compensation policy. The purchasing for all three facilities is done through the St. Louis County facility. Local supervisors send billing information to the St. Louis County facility which then processes all the billing. Two individuals perform the marketing for all three facilities. When the Employer needs to hire employees, it places an advertisement in the local newspapers serving the communities where its offices are located.

While there is some functional integration of operations, local offices have aspects of their operations, which are independent. For example, the Employer assigns clients to its office in the geographical boundary where they reside, and it normally assigns employees from that same office to provide all of the care to such clients. Supervisors at the three offices are each responsible for ensuring that their offices' clients receive the requested care. When a client has a complaint, the client contacts the local office. Each office has separate supervisory personnel who are on call 24 hours a day to take care of emergency situations.

### **3. Extent of Interchange of Employees**

The three facilities have limited employee interchange. The Employer's normal practice is to assign its clients to the office located in the geographical boundary where they reside and to assign employees from that same office to service such clients. The Employer maintains local offices in Jefferson County and St. Charles County in order to more efficiently service clients in those areas. Having an employee who lives near one of the local offices provide service to clients assigned to the same office minimizes the amount of time an employee must spend traveling to a client's residence.

There are limited circumstances where employees from one location have provided services to clients assigned to another office. When an employee provides patient care to another facility's client, they report to a supervisor in the office where the client is assigned. The record does not establish the details of what such supervision entails. When an employee from one location provides patient care to a client assigned to another facility, such an assignment is purely voluntary and employees have the right to decline such assignments.

Employees from St. Charles County and Jefferson County have on a limited basis provided services to St. Louis County's clients. There were three occasions during 2002 and zero occasions during 2003 when an employee from St. Charles County performed services for a St. Louis County client. There were 113 occasions during 2002 and 16 occasions during 2003 when a Jefferson County employee performed services for a St. Louis County client. The record also states that one of Jefferson County's home health aides, Ester McConnell, has regularly provided services during 2002 and 2003 to a St. Louis County client. The record does not establish whether her visits are included in the 113 and 16 numbers or if they constitute additional visits. The record does not establish what percentage these 113 or 16 visits made up of the total visits that Jefferson County's employees made during 2002 or 2003. Moreover, the record is unclear how many of Jefferson County's employees performed 113 or 16 visits. Respondent's witness testified that 25 percent of Jefferson County's employees performed the 2002 visits and that less than 10 percent performed the 2003 visits. However, the Employer failed to introduce any records to support this conclusion or to clearly explain how its witness reached these conclusions. The record indicates that a large percentage of the 113 visits during 2002 may have been made by one employee by the name of Toni Statton.<sup>3</sup>

Possibly two employees from the St. Louis County facility have provided care to Jefferson County or St. Louis County's clients during 2002 or 2003. The Employer's witness testified that one St. Louis County home health aide, Betty Hughes, has cared for a Jefferson County client. This witness did not testify as to what time frame Ms. Hughes performed this work, or how many occasions she visited the client. The Employer's witness testified that one LPN, Jamie Brokaw, assigned to an unnamed office has performed 50 percent of her work in St. Charles County and 50 percent in St. Louis County. The record does not establish what

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<sup>3</sup> The record does not establish the job title of Toni Statton.

time frame Ms. Brokaw performed this work, or how many visits she made to clients outside her assigned office. St. Charles County employees have not provided services to Jefferson County's clients, and Jefferson County employees have not provide services to St. Charles County's clients.

Thus, there is almost no interchange of employees from the St. Charles County facility to either the St. Louis County or Jefferson County facility. There is almost no interchange of employees from the St. Louis County facility to either the St. Charles County or Jefferson County facility. During 2002, there was some interchange of employees from the Jefferson County facility to the St. Louis County facility, but that interchange was drastically reduced during 2003.

#### **4. Work Contacts Among Employees**

The record does not establish work contact between employees at the three facilities. Employees perform patient care in the client's residence and they primarily work alone. The Employer's witness testified that employees from different locations could come in contact with one another. The witness testified it could occur if a St. Charles County and/or Jefferson County employee performed services for a St. Louis County client who receives 24-hour-a-day care. However, the record does not establish that this scenario has ever occurred. The record does not establish a single instance where for any reason a St. Louis, Jefferson, or St. Charles County employee has ever come in contact while working with an employee from another office. Thus, work contact between employees at other locations is minimal to non-existent. The Employer does have one Christmas party, which employees from all three locations are eligible to attend.

#### **5. Physical and Geographical Location in Relation to Each**

The facilities are some distance apart. The St. Charles County and St. Louis County offices are 30 to 35 miles apart, and the Jefferson County and St. Louis County offices are 30 miles apart.



## **6. The Differences in Skills or Types of Work Required**

Employees at the three facilities perform the same type of work, which requires the same type of skills and training. The licensing and certification requirements necessary for certain job classifications are consistent between all three locations. With regard to the classifications at issue in this case, the three locations employ employees in the same job classifications. The St. Louis County facility has a higher percentage of private pay clients than the Jefferson County and St. Charles County facilities. However, there is no evidence that private pay clients receive care, which is different from Medicaid or Medicare clients.

### **B. Analysis**

The facts above, and the record as a whole, establish that the Employer has not met its burden of rebutting the single-facility presumption. *O'Brien Memorial, Inc.*, 308 NLRB 553, 553-554 (1992); See also *Manor Healthcare Corp.*, 285 NLRB 224 (1987). The Employer has failed to establish that the St. Louis County facility has been "so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity." *J&L Plate*, *supra*. The three locations each have autonomy over their day-to-day labor relations. Local management has the authority and does interview, hire, evaluate, effectively determine the amount of wage increases, train, schedule, discipline, and discharge their own employees. The presence of local control is a decisive factor and overcomes even strong evidence of centralization. *O'Brien Memorial, Inc.*, *supra*. See also *Manor Healthcare Corp.*, *supra*. There is minimal, if any, work contact between employees at the three facilities. The facilities are a significant distance apart from each other. There is some functional integration. However, on a day-to-day basis, clients and employees at each location have little, if any, contact with the other offices. All employees are subject to the same personnel policies and procedures, and one location handles billing, payroll, purchasing and establishes wage and benefit levels. However, these factors do not mandate a finding that a single-facility unit is inappropriate. *O'Brien Memorial, Inc.*, *supra*. See also *RB Associates*, 324 NLRB 874 (1997) and *AVI*

*Foodsystems, Inc.*, supra. The Employer presented some evidence of interchange, primarily where Jefferson County's employees voluntarily provided patient care for St. Louis County clients. "[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity." *New Britain Transportation Co.*, 330 NLRB 327 (1999); citing *D&L Transportation*, 324 NLRB 160, 162 fn. 7 (1997). While the Employer's witness testified that during 2002, 25 percent, and during 2003, 10 percent, of Jefferson County's employees were engaged in interchange, she failed to establish how she reached this conclusion. Moreover, the Employer failed to establish what percentage of Jefferson County's total visits were made up by visits to St. Louis County's clients, and it failed to introduce any documents supporting the testimony about the interchange. The Employer had the burden of proving interchange and the lack of specific testimony minimizes the significance of its evidence. Moreover, in the normal course of the Employer's operation, employees from one facility visit only that facility's clients. While the work performed at the three locations and the skills required by employees are the same, the other relevant factors weigh against a finding of a multi-facility unit. *O'Brien Memorial, Inc.*, supra. See also *Manor Healthcare Corp.*, supra.

I have reviewed the cases cited by the Employer in support of a multi-facility unit. The cases cited are not analogous to the facts of this case. Rather, the facts in cases cited by the Employer highlight why a single-facility unit is appropriate in this case. For example, the Employer cites *Budget Rent A Car Systems, Inc.*, 337 NLRB No. 147 (2002) for its urging of a multi-facility unit. In *Budget* unlike this case, none of the facilities had separate local supervision, a district manager visited the local facilities on a weekly basis, the shared local supervisors did not have the authority to hire, transfer, approve overtime, or seriously discipline employees. Most importantly, in that case, the facilities shared a fleet of inventory, which traveled between the facilities many times per day. *Surpa* slip op. at 102. In *Waste Management of Washington, Inc.*, employees from the two locations shared common direct supervision, customer contacts for both locations came into one facility, and employees from the

facility not sought by the petitioner were in contact via radio with employees at the other location throughout the day. 331 NLRB 309 (2000).

### **III. ISSUES TO CONSIDER FOR INCLUSION OF LPNs IN THE UNIT**

The Employer contends that the LPNs share a community of interest with the aides and, therefore, must be included in the proposed bargaining unit. For the reasons detailed below, I find that the LPNs and the aides do not have a sufficient community of interest with aides to require their inclusion in an appropriate bargaining unit.

In the health care industry, as in any other, the Petitioner is only required to seek an appropriate unit but is not required to seek the most appropriate unit. *Fairbault Clinic Ltd.*, 308 NLRB 131, 133 (1992); citing *Newington Children's Hospital*, 217 NLRB 793 (1975).

In making unit determinations in cases involving non-acute health care institutions, such as home health care institutions, the appropriateness of the unit must be analyzed under the empirical community of interest test. *Health Acquisition Corp.*, 332 NLRB No. 134 (2000); citing *Park Manor Care Center, Inc.*, 305 NLRB 872, 875 (1991). See also *Jefferson Health Systems*, 330 NLRB 653, 656 (2000). Under that test, the Board considers community of interest factors, factors deemed relevant by the Board in its rulemaking proceedings in collective-bargaining units in the health care industry, the evidence presented during rulemaking with respect to units in acute-care hospitals, and prior precedent. *Hillhaven Convalescent Center*, 318 NLRB 1017 (1995). See also *Park Manor*, *supra*.

#### **A. Discussion of relevant factors**

##### **1. Wages, Hours, Working Conditions, and Supervision**

LPNs' wages are significantly higher than aides' wages. The record does not establish how much any of the various aide classifications are paid, or how much LPNs are paid, but it does establish that LPNs earn 20 percent more than the aides. Aides and LPNs are all eligible for the same fringe benefits if they work at least 35 hours per week. However, none of the St. Louis County LPNs work enough hours to qualify for fringe benefits. The record does not

establish how many St. Louis County aides work enough hours to qualify for benefits. LPNs' conditions of employment appear to be significantly different from those of aides. For example, aides normally see one or two clients at a time, whom they see 5 days per week, and spend between 10 and 40 hours each week with them. In contrast, LPNs typically visit their clients only one time per week for 1 hour. While the record does not establish how many clients LPNs visit each week, it would appear they visit many clients per week and spend a great deal more of their time traveling between clients' residences. The aides and LPNs employed in the St. Louis County facility report to different supervisors.

## **2. Training and Educational Requirements**

The training required of an LPN is significantly higher than that required for the various aide classifications. LPNs are required to have completed 1 year of schooling at an accredited nursing school and hold a state license. CNAs must hold a GED or high school diploma, complete 75 hours of training, which typically takes place in a nursing home, complete 100 hours-of-on-the job training, pass a state test, and hold a state license. APCs must complete an 8-hour class, work at least 15 hours per week for a home health agency for 90 days, and then be task verified by a registered nurse. Once they complete this on-the-job training, the Employer then issues them a certification, which is valid only with this Employer. The job titles of home aide and home health aide are interchangeable. The record does not reflect that these employees must have any specified training or experience. The home aide/home health aide position is an introductory position for employees who may later become APCs. Field relief aides have the same training as CNAs or APCs.

## **3. Work Contact**

Work contact between aides and LPNs is limited. There are 116 aides and 3 LPNs employed at the St. Louis County facility. Normally aides work alone in a client's home. Aides provide clients routine care, while LPNs must have a doctor's order before they can visit a client. Aides provide care to one to two clients per week and spend between 10 and 40 hours per

week with each client. An LPN does not see some clients who are cared for by an aide at all. LPNs generally only encounter aides one time per week when they visit a client for 1 hour. The Employer prefers that the LPN visit while an aide is present. However, aides are not always present during the LPNs' visits.

The Employer's witness provided conclusionary testimony that aides come in contact with LPNs during 40 percent of their working time. The Employer failed to introduce a single document to support this conclusion, and its witness failed to clearly explain how she reached this conclusion. Other testimony provided by the same Employer witness establishes that this percentage is not accurate. The witness testified that the minimum number of clients an aide visits per week is one, and the minimum number of hours each aide spends with a client per week is 10. This witness also testified that the three LPNs working at the St. Louis County facility work less than 35 hours per week. It is simply not possible for 3 LPNs, working less than 35 hours per week, to be present during 40 percent of the working time of 116 employees working at least 10 hours per week. In contrast to the Employer's conclusionary testimony, a number of aides testified that they rarely, if ever, come in contact with LPNs. Two of the aides who testified had worked for the Employer for 10 years or more. While the Employer's witness stated that aides come in contact with LPNs during their annual training, she failed to provide any testimony regarding how many hours this annual training lasts.<sup>4</sup>

#### **4. Job Duties and Uniqueness of Function**

The job duties of aides differ from those of LPNs. Aides are normally assigned one or two clients who they visit every day, spending up to 8 hours with them, providing routine care. LPNs normally visit clients 1 hour per week performing care ordered by a doctor. LPNs primarily perform nursing care involving medically related duties such as setting up medications,

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<sup>4</sup> Employer's Exhibit 7 states employees must have 10 hours of annual in-service training.

taking vital signs, and changing dressings.<sup>5</sup> Passing of medication is a function unique to LPNs and one which aides cannot perform. CNAs and APCs perform such tasks as cooking, cleaning, feeding, dressing, bathing, shaving, providing nail and foot care, and changing dressings. Nurse aides/home health aides perform the same tasks as CNAs and APCs except they cannot perform some advanced personal care duties or medically related tasks. Field relief aides perform the job assignments of the aide classification they are filling at the time. LPNs can and do sporadically perform aide duties, but such tasks are purely voluntary and they do not regularly perform such tasks.<sup>6</sup>

## **B. Analysis**

The unit sought by the Petitioner, which excludes LPNs, is an appropriate unit. LPNs' higher wage rate, lack of common supervision, higher training, and greater licensing requirements,<sup>7</sup> limited job related contact, and differing job duties bring me to the conclusion that LPNs do not share a community of interest with aides which requires their inclusion in the unit. *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160 (1995) and *Hillhaven Convalescent Center* 318 NLRB 1017 (1995). As discussed above, the Board has stated that in determining unit inclusion issues in the health care industry it will look to prior cases involving either the type of unit sought or the type of health care facility in dispute. There are no cases decided after *Park Manor*, involving the inclusion or exclusion of LPNs from a nonprofessional unit in a home health care setting. However, *Lincoln Park* and *Hillhaven* both involved whether, in a nursing home setting, LPNs were properly excluded from a nonprofessional unit. In those

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<sup>5</sup> While the Employer's witness stated it has a job description for LPNs, it did not introduce this document.

<sup>6</sup> The Employer's witness testified that one St. Louis County LPN, Laura Bolden, who is retired, has chosen to regularly provide aide services to one of its clients. The record does not establish whether this employee is paid as an aide or an LPN when performing these duties.

<sup>7</sup> I recognize that CNAs like LPNs must have a state license, however, none of the other aides in the unit require state licensing.

cases, the Board excluded LPNs from the nonprofessional units because, while LPNs and CNAs had some overlapping duties, there was a pay gap between LPNs and CNAs, LPNs were required to have more training and licensing requirements, and LPNs had job functions which were distinct from those of the CNAs. *Hillhaven*, supra at 1018-1019; *Lincoln Park*, supra at 1161-1162. The presence of all those factors here, indicate that the unit requested by the Petitioner is appropriate. Moreover, the facts in this home health care setting present a stronger case for exclusion of the LPNs than those in a nursing home setting. Here, unlike a nursing home, aides work alone the vast majority of their time; there is no centralized work place, rather aides and LPNs work in their client's residence; aides' work is less integrated with that of the LPNs; and there is less on-the-job contact between aides and LPNs, in fact aides may only see LPNs during their annual training.

The Employer contends that LPNs must be included in a unit with the aides because exclusion of the three LPNs at the St. Louis County facility would leave a unit impractically small. *Charter Hospital*, 313 NLRB 951, 952 (1994); *Park Manor Care Center, Inc.*, 305 NLRB, 872, 877 (1991); and *Hillhaven Convalescent Center*, 318 NLRB 1017, 1019, fn. 10 (1995). The Board in its rulemaking procedures regarding acute-care facilities found that a petitioned-for unit involving five or fewer employees would constitute an "extraordinary circumstance" removing the case from a strict application of the units established in its health care rules. 54 Fed. Reg. 16341-16342, 284 NLRB 1588. The Board has applied this unit size consideration to non-acute care health facilities such as nursing homes. *Park Manor Care Center, Inc.*, NLRB, supra; and *Hillhaven Convalescent Center*, supra. However, the record in this case does not establish whether the Employer employs employees in other classifications, which might be properly included in a unit with the three LPNs. In fact, information from the Employer's web site, which is contained in the record, indicates that the Employer may employ employees in such classifications. Thus, the record does not adequately address whether the petitioned-for unit would leave the three LPNs alone in a separate unit or whether such a separate unit would be

so impractically small as to require the LPNs inclusion in the unit sought by the Petitioner. Accordingly, I shall permit the LPNs at the St. Louis County facility to vote pursuant to the Board's challenged ballot procedure.

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed;
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case;
3. The Petitioner claims to represent certain employees of the Employer;
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act; and
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and per diem certified nurses aides, advanced personal care aides, nurses aides/home health care aides, and field relief aides employed by the Employer at its facility located at 10135 Manchester Road, St. Louis, Missouri, EXCLUDING registered nurses, quality assurance coordinators, staffing coordinators, office clerical, professional employees, guards, and supervisors as defined in the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 2000. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.



### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103-2829, on or before **August 12, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EST) on **August 19, 2003**. The request may **not** be filed by facsimile.

Dated: August 5, 2003,  
at St. Louis, Missouri

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Ralph R. Tremain, Regional Director  
National Labor Relations Board, Region 14

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